

Governor's Work Group on Commercial Access to Government Electronic Records

MEETING ROLL UP

Thursday, July 11, 1996 at 1:00 p.m. to 5:00 p.m.

The official minutes of the Work Group's meetings are in the form of audio cassettes which are available through the DIS Communications Office. This summary is based on staff notes and is provided as a courtesy. This summary hasnot been approved or adopted by the group.

Background to the Creation of the Work Group and its Charter

The full text of Steve Kolodney's opening comments about the group's charge, direction and areas that would and would not be addressed are available through the Work Group's Web Site at <http://www.wa.gov/dis/commaccess>

Opening Remarks

Governor Mike Lowry said that commercial access to public records represents a growing question in the electronic age. The Work Group can send the clearest possible message by developing a coherent policy that balances legitimate business and government interests with personal privacy concerns.

The resulting policy should be fair to competitors, not favoring one private-sector interest over another. The policy should safeguard the privacy of the individuals who ~~are~~*required* to provide information to government -- they do not have a choice. Finally, the policy should address cost recovery -- electronic systems are expensive and the demands for public resources are many. Referring to the Work Group's charter and overview, the Governor said, "This little sheet lays that out well."

The Governor reminded the group that the intent of the citizen initiative in 1972 was to open up government, surfacing the activities of lobbyists. Given that, the Governor said he hoped the task force does not get scared away from dealing with privacy issues related to commercial release of government records.

Introductory Comments by Work Group Members

Katherine Baros Friedt, Director, Department of Licensing said that, as head of a "content rich agency," she was concerned about the piecemeal and inconsistent policies that had evolved concerning commercial release of public records. Even within DOL, she noted that the rules for releasing drivers records were different than those for motor vehicles records. She also noted electronic records require behavioral change. She said that the public expects proper stewardship of personally identifiable information. The use of established practices for the handling of paper records may be inadequate -- and potentially offensive -- when dealing with electronic records which can be used in ways in which hard copy cannot.

Kent Caputo, Legal Counsel, Office of the Governor said that people do not give government information about themselves voluntarily. They are required to provide the information -- often with the threat of legal sanction against them if they do not. Given the personal nature of the information, and the circumstances under which it was provided, government must be careful to safeguard the information that has been entrusted to it.

Chip Holcomb, Senior Assistant Attorney General, Attorney General, said that he welcomes the opportunity to work toward the day when -- for the first time -- the state will have one written policy on commercial, rather than bits and pieces that address a growing number of specific cases.

Public policy tends to lag behind developments. The lag is even more pronounced in dealing with electronic records because of relentless technological change. The advances related to the Internet and skip tracing often eclipse the public sector's ability to keep up. The accumulation of personally identifiable information in the private sector outstrips what government is doing -- which is why issues of second and third use of public records is so important.

Dennis Karras, Director, Department of Personnel, said that DOP handles a great deal of sensitive information and faces a real struggle over the use of that information. Who are the requesters? How do we differentiate among news organizations, those with legitimate business purposes, commercial resellers and private citizens? How often do requests for information from news agencies end up being used for commercial purposes? Where do third parties get their information? How are they held to account?

Gary Moore, Commissioner, Employment Security, said ESD is under ever increasing pressure to release information to commercial interests -- mortgage companies and others with a proprietary interest in the information.

Lyle Quasim, Secretary, Department of Social and Health Services said his agency is responsible to three "publics": 1) the people of Washington; 2) 1.2 million people served by DSHS; and 3) the contractors used to provide services. Each "public" has different needs for information -- and often different expectations about how the information will be handled. He said the work group needs to identify basic themes and applauds the move to a consistent approach to commercial release of public records.

Nancy Zussy, State Librarian said that as the work group moves toward developing consistency among agencies, it may be instructive to remember two themes that emerged from ~~Public~~ *Information Access Policy Task Force* 1) Government is the steward, not owner of information; and 2) Government should collect only the information it needs and keep it for only as long as it needs it.

Mary Margaret Haugen, Washington State Senator said that when it comes to the effective handling of public information, the state stands to gain as a customer of value-added services provided by the private sector. Given that the state cannot afford to do it in house, she was advocate for the measures in 2790 but recognizes the need for such legislation to be cast in terms of a larger policy framework.

Cathy Wolfe, Washington State Representative, said commercial access is also an efficiency issue -- finding new ways to better share information among government entities. Private sector participation allows government greater access to state-of-the-art technology and the ability to better manipulate data. Private sector participation also helps to mitigate technology-related risks and costs.

Panel Discussion: State of the Law in Washington State

Chip Holcomb said the emerging electronic environment challenges some basic assumptions about the nature of the user and the nature of the information itself. Where commercial release is concerned, the Work Group may not be talking about the public records act so much as the implications of on-line, real-time, dedicated access to title insurance and other databases. Old privacy problems complicate the new electronic environment because there is no single definition for all users that cuts across all planes in all jurisdictions. The growing demand for government information points to a resource problem within government -- how do agencies answer requests for information without taking away resources from the agency's legislatively-mandated work? In the paper world, agencies were limited to charging the cost of reproduction only. What about cost in electronic age? There is the possibility of making a legal justification for additional charges but it is a high threshold and no one yet has made the case for them.

Linda Moran, Assistant Attorney General, Departments of Licensing and Employment Security, deals daily with the "practical conundrums" related to commercial release. She asked the Work Group to amend its charter and questions to include "commercial ~~and~~ business purposes" particularly where safeguarding personal information is concerned. For example, driver's records are private -- exempt employers, insurers and alcohol counselors have access. In considering current practices, she said the two central questions are 1) Is there a level playing field of access?; and 2) Does it comport to state law? She was concerned that there are no enforcement provisions under the Open Records Act -- no policing and no disincentives to abuse.

Michael Killeen, Attorney, Davis Wright Tremaine, represents the newspaper industry in Washington State. He cautioned the Work Group against changes to the Open Records Act that would limit the openness of government -- the public would not stand for it, nor would the media.

Killeen set out a series of basic principles that he said should guide the group's deliberations:

- Look at systems from the outside, avoid a government-knows-best prescription.
- Focus on the advantages of electronic records to public -- better, more accountable government -- it is not a crime to add value and sell information.
- Public information is just that, public. Bought and paid for.
- Agencies must resist lure of easy money through commercialization of data.
- Prohibit exclusive licensing, avoid the pitfalls of the arrangements such as those between the Courts and Westlaw.
- Agencies should enhance access, not restrict it in the name of enhanced revenues.
- Anytime personal privacy concerns are invoked, his suspicion is that it is used as a trap to restrict access.

Panel Discussion: Current Practices in Washington State: Agencies, Local Government, Higher Education

John Swannack, Deputy Director, Department of Licensing said that while the department does not actively “market” data, it does generate \$23M per biennium through the commercial release of public records. DOL releases information only according to RCW and written agreement (most of which prohibit secondary use). The department will request legislation this year to align Washington statutes with federal requirements. No on-line access provided to any private interest - magnetic tape only.

Tim Brown, Chief, Research and Data Analysis, DSHS, said a recent case illustrated the policy void surrounding requests for electronic records. Further, as the number of such requests increase, it is difficult to distinguish between media and commercial requests. An internal work group that studied the issues surrounding commercial release of electronic records concluded:

- There is a crucial distinction between a public disclosure request for existing electronic records and a request in which records may have to be created to satisfy the request. An agency should not be required to create an electronic record that does not currently exist to satisfy a request for disclosure.
- Agencies should be allowed to charge reasonable fees to recover the actual cost of providing electronic records to satisfy a disclosure request.
- Program directors and data managers should be informed that deleting confidential information from records does not constitute the creation of a new record. State agencies are responsible for segregating public from non-public information in their electronic records, and must absorb the cost of redacting [or masking] records to allow public disclosure.

Elizabeth Ward, Assistant Director, Epidemiology and Health Statistics, Department of Health said the department takes a non-proprietary attitude toward information. Information that is releasable for commercial purposes and those that are not (vital statistics and directories of licensed or registered health professionals) are defined in statute. The department is also concerned that the costs of responding to requests take resources away from mission-related work. She said there is a problem (with a pending legislative solution) in that state investigations or records for Hospitals cannot be disclosed; yet hospital Medicare surveys and records are releasable -- creating a double standard. The department's privacy concerns are: 1) protecting patients, staff and complainants; and 2) preventing birth certificate fraud.

Jim Justin, Association of Washington Cities polled his group's membership about records requests, and heard back from 37 of 275 cities and towns. On average, respondents reported receiving 15-300 per year. Not surprisingly, the larger cities received the greatest number of requests, with Everett at over 2000 and Seattle at over 3000 each year. He also said the handling of Geographic Information Systems (GIS) was the largest single issue facing cities, which led to a discussion with Mr. Holcomb over the relative merits of the approach taken by the City of Seattle.

Emily Hill, Public Records Officer, University of Washington said federal statutes protect student records but there are growing concerns over the confidentiality of those records in the electronic environment

Debbie Wilke, County Officials Association, said her membership is increasingly dealing with requests for property assessment records, tax rolls, documents recorded with the county auditor, and voter registration records in electronic format. The ability to respond to requests for electronic records varies widely from county to county.

She said that requesters are required to sign affidavits stipulating that the records will not be used for commercial purposes. However, there are no enforcement provisions and no penalty for abuse.

The counties have identified a number of issues related to the release of commercial records:

- Security of records
- Privacy of the subject of the records
- Lack of Internet-related policies
- Additional demands on office personnel
- Lack of enforcement and penalties for commercial use of the data
- Anticipated increase in requests with the integration of GIS and assessment information
- Emerging problems associated with remote access
- Inconstant policies within counties

Mechanisms for Public Comment

It is the declared policy of the work group to obtain public input regarding these important issues. The public is invited to comment via:

E-Mail: **comment@dis.wa.gov**
via Web Site: **<http://www.wa.gov/dis/commaccess>**

Mail: **Governor's Work Group**
P.O. Box 42445
Olympia, WA 98504

And the Work Group's Public Meetings